Beverly Eaves Perdue, Governor

Dee Freeman, Secretary
North Carolina Department of Environment and Natural Resources

Coleen H. Sullins, Director
Division of Water Quality

2009 AUG -5 P 3

July 30, 2009

Mr. A. Stanley Meiburg, Acting Regional Administrator
Environmental Protection Agency, Region IV
61 Forsyth Street SW
Atlanta, GA 30303

SUBJECT: Request for Approval of Modifications to North Carolina's Surface Water Quality Classifications

Dear Mr. Meiburg:

In accordance with the provisions of Section 303 of the Clean Water Act, I am submitting North Carolina's formal request for review and approval of revisions to the Surface Water Quality Standards and Stream Classifications rules adopted by the North Carolina Environmental Management Commission (EMC) from November 2008 through May 2009. These revisions pertain to the reclassifications of (1) a portion of the Cape Fear River, and (2) the Horsepasture River.

A complete listing of the enclosures submitted as part of this package is attached. A letter of opinion from our Attorney General certifying that the revised rules were adopted following public hearing and that the revisions are valid and enforceable in the State of North Carolina is included as Enclosure 4.

I hope you will find the reclassifications included in this package satisfactory with regard to the requirements of the Clean Water Act. I look forward to receiving your letter of approval on all the items submitted as part of this package. If you should have any questions, please call Elizabeth Kountis at (919) 807-6418.

Sincerely,

Coleen H. Sullins

Enclosures

cc: Chuck Wakild, Alan Clark, Jeff Manning (DWQ)
Joanne Benante, Lisa Perras Gordon (EPA)

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List of Enclosures

Enclosure 1. *Summary of North Carolina Surface Water Quality Reclassifications Effective January 2009 - July 2009 (includes "Table 1. List of Surface Water Reclassifications That Became Effective from January 2009 - July 2009")*

Enclosure 2. *Schedules of Classifications as Amended in January 2009 – July 2009*

Enclosure 3. *Records of Rule-Making for Reclassifications*

Enclosure 4. *Attorney General's Certification*

Enclosure 1.
Summary of North Carolina Surface Water Quality Reclassifications Effective January 2009 – July 2009

During the first half of the 2009 calendar year, two surface water reclassifications became effective. The chemical/physical/biological properties, character of the watershed and bordering areas, economic considerations, and past/present/future uses of these watersheds were considered when determining the appropriate class for each of the reclassifications.

Please note that each specific waterbody is listed in "Table 1. List of Surface Water Reclassifications That Became Effective from January 2009 – July 2009." Along with the classification change, the table indicates the date that the proposed rule was taken to public hearing, the date that the EMC took action on the rule, and the date that the change was effective.

Primary freshwater classifications assigned to North Carolina surface waters include Class C and Class B. Class C waters are protected for aquatic life propagation and maintenance of biological integrity (including fishing and fish), wildlife, secondary recreation, agriculture and any other usages except for primary recreation or as a source of water supply for drinking, culinary or food processing purposes. Secondary recreation includes wading, boating, other uses not involving human body contact with water, and activities involving human body contact with water where such activities take place on an infrequent, unorganized, or incidental basis. All waters of the state are at least protected for Class C uses.

Class B waters are protected for primary recreation as well as for all Class C purposes. Primary recreation includes swimming, skin diving, skiing, and similar uses involving human body contact with water where such activities take place in an organized or on a frequent basis. Wastewater dischargers to Class B waters are required to meet reliability standards and fecal coliform limits. Reliability standards require facilities to insure continued treatment of wastewater during instances of power failure.

In North Carolina's classification scheme, there are also five specific water supply (WS) primary classifications. These waters are protected as sources of water supply for drinking, culinary or food processing purposes as well as for all Class C purposes. The instream numerical standards are identical for each of the water supply classifications. The differences between the water supply classes are the management strategies, which are based on risk management. Development density and types of wastewater dischargers in a watershed are criteria used when evaluating what classification should be most appropriately assigned to a water supply watershed. WS-I water supplies are located in natural and undeveloped areas in public ownership with no point source discharges. Management strategies for these waters include prohibition of wastewater discharges and development. Progressing from WS-II through WS-IV water supply watersheds, the density of development increases and the type of discharger shifts from exclusively general to a mixture of all types; these water supply watersheds only allow for the types of dischargers located within them, the level of controls on development activities decreases progressing from the WS-II to the WS-IV watersheds, and restrictions are applied to either the entire watershed (WS-II and WS-III) or a large portion of it (WS-IV). Class WS-V waters are generally upstream and draining to Class WS-IV waters, are used by industry to supply

their employees with drinking water, or were formerly used for public water supplies; these waters have no associated restrictions on types of dischargers or density of development.

One of the reclassified waters submitted for approval, more specifically a portion of the Cape Fear River (number 1 in Table 1), involved changes to non-water supply waters and were reclassified from Class C to Class WS-IV CA and Class WS-IV. This reclassification occurred to provide additional protection to waters for use as a potable water supply source initially by Smithfield Packing Company, and in the future, by potentially several southern coastal plain municipalities. The reclassification will increase the amount of potable water supply and thus, help to meet water supply demands via a new water supply intake. Development density and types of wastewater dischargers in a watershed are criteria used when evaluating what classification should be most appropriately assigned to a water supply watershed.

Supplemental classifications for surface waterbodies include the Outstanding Resource Waters (ORW) classification. The criteria for designation to ORW are that the waters must be rated Excellent by DWQ and have one of the following outstanding resource values:

- Outstanding fish habitat and fisheries;
- Unusually high level of waterbased recreation;
- Some special designation such as N.C. or National Wild/Scenic/Natural/Recreational River or National Wildlife Refuge;
- Important component of state or national park or forest; or
- Special ecological or scientific significance (rare or endangered species habitat, research or educational areas).

No new or expanded wastewater discharges are allowed in ORWs. Stringent controls apply to specific development projects on land within the entire watershed or drainage area of an ORW.

Symbol classifications are assigned to surface waterbodies when the management strategies associated with the primary and supplemental classifications have been determined to not be adequate enough to protect specific waters. These classifications are represented by symbols such as "+," "@," "#," and "*," and the management strategy associated with each symbol often varies within a river basin as well as by river basin, i.e. a "+" management strategy in the Savannah River Drainage Area is different than the "@" management strategy in that same basin and different than the "+" management strategy in the Tar-Pamlico River Basin. Typically, these strategies have involved development and/or discharge restrictions on waters adjacent to classified ORW and shellfishing (SA) waters.

The lower portion of another water submitted for approval, Horsepasture River (number 2 in Table 1), was reclassified as ORW, and the upper portion of this river was reclassified as "+." In this case, the "+" represents a special management strategy consisting of the same requirements as the ORW designation except for allowances provided for wastewater dischargers.

Please view the "Report of Proceedings" for each of the above-mentioned reclassifications at http://h2o.enr.state.nc.us/csu/rop.htm for further information.

Table 1. List of Surface Water Reclassifications That Became Effective from January 2009 – July 2009								
No	Waterbody	River Basin	County	Class Change From	Class Change To	Public Hearing	EMC Action	Effective Date
1	Cape Fear River	Cape Fear	Bladen, Cumberland	C	WS-IV CA, WS-IV	08/14/08	11/13/08	01/01/09
2	Horsepasture River	Savannah	Jackson, Transylvania	B Tr, C Tr	ORW, "+"	04/22/08	5/14/09	07/01/09

Enclosure 2.
Schedules of Classifications
as Amended in January 2009 – July 2009

Reference Material to Regulation 15A NCAC 0311 Cape Fear River Basin, entitled CLASSIFICATIONS AND WATER QUALITY STANDARDS ASSIGNED TO THE WATERS OF THE CAPE FEAR RIVER BASIN, has been amended 1-1-09 as follows:

Name of Stream	Description	Class	Index Number
Cape Fear River	From a point approximately 0.5 mile upstream of Smithfield Packing Company's intake to Smithfield Packing Company's intake (approximately 2 miles upstream of County Road 1316)	WS-IV; CA	18-(26)
Cape Fear River	From a point approximately 1 mile upstream of Grays Creek to a point approximately 0.5 mile upstream of Smithfield Packing Company's intake	WS-IV	18-(26)
Georgia Branch (Prospect Hall Creek)	From source to Cape Fear River	WS-IV	18-38
Mines Creek	From dam at Pages Lake to Georgia Branch	WS-IV	18-38-1-(2)
Mines Creek (Pages Lake)	From source to dam at Pages Lake	WS-IV, B	18-38-1-(1)
Willis Creek	From source to Cape Fear River	WS-IV	18-37
Unnamed Tributary at Willis Creek Church	From dam at McGaugans Lake to Willis Creek	WS-IV	18-37-3-(2)
Unnamed Tributary at Willis Creek Church (McGaugans Lake)	From source to dam at McGougans Lake	WS-IV, B	18-37-3-(1)
Kirks Mill Creek	From source to Willis Creek	WS-IV	18-37-2
Swans Creek	From a point approximately 0.2 mile downstream of County Road 2233 to Willis Creek.	WS-IV	18-37-1
Longs Branch (McNeill Pond)	From a point approximately 0.04 mile downstream of County Road 2261 to Swans Creek.	WS-IV	18-37-1-1
Hairs Mill Creek	From source to Cape Fear River	WS-IV	18-36
Grays Creek	From a point approximately 0.04 mile downstream of County Road 2233 to Cape Fear River.	WS-IV	18-35-(2)

Reference Material to Regulation 15A NCAC 0303 Little Tennessee River Basin and Savannah River Drainage Area, entitled CLASSIFICATIONS AND WATER QUALITY STANDARDS ASSIGNED TO THE WATERS OF THE LITTLE TENNESSEE RIVER BASIN AND SAVANNAH RIVER DRAINAGE AREA, has been amended 7-1-09 as follows:

Name of Stream	Description	Class	Index Number
Horsepasture River (Lupton Lake, Sapphire Lake)	From source to N.C. Hwy. 281 (Bohaynee Road)	C,Tr+	4-13-(0.5)
Laurel Creek	From source to Lupton Lake, Horsepasture River	C,Tr+	4-13-1
Rochester Creek	From source to Horsepasture River	C,Tr+	4-13-2
Logan Creek	From source to Horsepasture River	C,Tr+	4-13-3
Flatwood Branch	From source to Logan Creek	C,Tr+	4-13-3-1
Right Prong Logan Creek	From source to Logan Creek	C,Tr+	4-13-3-2
Intake Branch	From source to Sapphire Valley Inn Water Supply Intake	C,HQW+	4-13-4-(1)
Intake Branch	From Sapphire Valley Inn Water Supply Intake to Horsepasture River	C,Tr+	4-13-4-(2)
Trays Island Creek	From source to Camp Merrie-Woods Water Supply Intake	C,HQW+	4-13-5-(1)
Long Branch	From source to Trays Island Creek	C,HQW+	4-13-5-2
Trays Island Creek (Fairfield Lake)	From Camp Merrie-Woods Water Supply Intake to Dam at Fairfield Lake	B+	4-13-5-(3)
Trays Island Creek	From Dam at Fairfield Lake to Horsepasture River	C+	4-13-5-(4)
Mud Creek	From source to Horsepasture River	C+	4-13-6
Nix Creek	From source to Sapphire Lake, Horsepasture River	C+	4-13-7
Little Hogback Creek	From source to Horsepasture River	C,Tr+	4-13-8
Hogback Creek	From source to Horsepasture River	C,Tr+	4-13-9
Burlingame Creek	From source to Horsepasture River	C+	4-13-10
Rock Creek	From source to Horsepasture River	C,Tr+	4-13-11
James Creek	From source to Horsepasture River	C+	4-13-12
Horsepasture River	From N.C. Hwy. 281 (Bohaynee Road) to a point approximately 0.60 mile downstream of N.C. Hwy. 281	B,Tr,+	4-13-(12.5)
Horsepasture River	From a point approximately 0.60 mile downstream of N.C. Hwy. 281 (Bohaynee Road) to NC-SC state line	B,Tr, ORW	4-13-(12.75)

Enclosure 3.
Records of Rule-Making for Reclassifications

AGENCY COPY November 14, 2008

SUBMISSION FOR PERMANENT RULE

[Authority G.S. 150B-21.19]

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name (name not required for repeal): 15A NCAC 02B .0311 Cape Fear River Basin

3. Action: ☐ ADOPTION ☒ AMENDMENT ☐ REPEAL

4. Notice:

☒ Notice Required
Notice of text on: 07/15/2008
Hearing on: 08/14/2008
Adoption by agency on: 11/13/2008

☐ Notice not required under G.S.:
Adoption by agency on:

5. Fiscal impact (mark all that apply):

☐ State funds affected
☐ Local funds affected
☐ Substantial economic impact
☐ No fiscal note required pursuant to G.S. 150B-21.4
☐ Rule-making is not subject to G.S. 150B-21.4;
Cite authority:

6. Rule establishes or increases a fee?

☐ Yes
☐ The agency has express authorization of the amount of the fee (G.S. 12-3.1(a)(1)).
☐ The agency has general authorization for the fee and has consulted the Joint Legislative Commission on Governmental Operation. Date of consultation:
☐ The agency has general authorization for the fee and has not consulted the Joint Legislative Commission on Governmental Operation.

☒ No

7. REASON FOR ACTION

7A. What prompted this action? Check all that apply:

☒ Agency
☐ Court order / cite:
☐ Federal statute / cite:
☐ Federal regulation / cite:
☐ Legislation enacted in last General Assembly session
Cite Session Law: 2005-0097
☐ Petition for rule-making
☐ Other:

7B. Explain: Lower Cape Fear Water and Sewer Authority requested that a Cape Fear River segment be reclassified to WS-IV CA and WS-IV (PA). The reason for the reclassification is to allow for a new intake structure in the river. Initially, the new intake will provide a potable water supply for Smithfield Packing Company. In the future, the intake will provide a source of potable water for potentially several southern coastal plain municipalities. DWR and DEH do not object to the proposal, and according to 2007 DWQ studies, the waters to be reclassified meet water supply water standards and criteria for the WS-IV designation.

8. Rule-making Coordinator: Nancy C. Pate
Address: 1601 Mail Service Center
Raleigh, NC 27699-1601
Phone: 919/715-4192
E-Mail: nancy.pate@ncmail.net

Agency Contact, if any: Elizabeth Kountis
Phone: (919) 807-6418
E-Mail: Elizabeth.Kountis@ncmail.net

9. Signature of Agency Head* or Rule-making Coordinator:

Nancy C Pate

*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Nancy C. Pate
Title: DENR Rule-making Coordinator

RRC AND OAH USE ONLY

Action taken:
APPROVED DEC 18 2008
☑ RRC Approval:
☐ RRC Objection:
☐ RRC Extension of review:
☐ RRC determined substantial changes:
☐ Subject to Legislative Review
☐ Other:

Submitted for codification in the Code:

AGENCY COPY November 14, 2008

15A NCAC 02B .0311 has been amended with changes as published in 23:02 NCR 175-179 as follows:

15A NCAC 02B .0311 CAPE FEAR RIVER BASIN

(a) The Cape Fear River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:

(1) the Internet at http://h2o.enr.state.nc.us/csu/; and

(2) the North Carolina Department of Environment and Natural Resources:

(A) Winston-Salem Regional Office
585 Waughtown Street
Winston-Salem, North Carolina

(B) Fayetteville Regional Office
225 Green Street
Systel Building Suite 714
Fayetteville, North Carolina

(C) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina

(D) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina

(E) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina

(F) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) The Cape Fear River Basin Schedule of Classification and Water Quality Standards was amended effective:

(1) March 1, 1977;

(2) December 13, 1979;

(3) December 14, 1980;

(4) August 9, 1981;

(5) April 1, 1982;

(6) December 1, 1983;

(7) January 1, 1985;

(8) August 1, 1985;

(9) December 1, 1985;

(10) February 1, 1986;

(11) July 1, 1987;

(12) October 1, 1987;

(13) March 1, 1988;

(14) June 1, 1988;

(15) July 1, 1988;

(16) January 1, 1990;

(17) August 1, 1990;

(18) August 3, 1992;

(19) September 1, 1994;

(20) August 1, 1998;

(21) April 1, 1999;

(22) August 1, 2002;

(23) November 1, 2004;

(24) November 1, ~~2007.~~2007;

(25) ~~May~~January 1, 2009.

(c) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective June 1, 1988 as follows:

(1) Cane Creek [Index No. 16-21-(1)] from source to a point 0.5 mile north of N.C. Hwy. 54 (Cane Reservoir Dam) including the Cane Creek Reservoir and all tributaries has been reclassified from Class WS-III to WS-I.

(2) Morgan Creek [Index No. 16-41-1-(1)] to the University Lake dam including University Lake and all tributaries has been reclassified from Class WS-III to WS-I.

(d) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective July 1, 1988 by the reclassification of Crane Creek (Crains Creek) [Index No. 18-23-16-(1)] from source to mouth of Beaver Creek including all tributaries from C to WS-III.

(e) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as follows:

(1) Intracoastal Waterway (Index No. 18-87) from southern edge of White Oak River Basin to western end of Permuda Island (a line from Morris Landing to Atlantic Ocean), from the eastern mouth of Old Topsail Creek to the southwestern shore of Howe Creek and from the southwest mouth of Shinn Creek to channel marker No. 153 including all tributaries except the King Creek Restricted Area, Hardison Creek, Old Topsail Creek, Mill Creek, Futch Creek and Pages Creek were reclassified from Class SA to Class SA ORW.

(2) Topsail Sound and Middle Sound ORW Area which includes all waters between the Barrier Islands and the Intracoastal Waterway located between a line running from the western most shore of Mason Inlet to the southwestern shore of Howe Creek and a line running from the western shore of New Topsail Inlet to the eastern mouth of Old Topsail Creek was reclassified from Class SA to Class SA ORW.

(3) Masonboro Sound ORW Area which includes all waters between the Barrier Islands and the mainland from a line running from the southwest mouth of Shinn Creek at the Intracoastal Waterway to the southern shore of Masonboro Inlet and a line running from the Intracoastal Waterway Channel marker No. 153 to the southside of the Carolina Beach Inlet was reclassified from Class SA to Class SA ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as follows: Big Alamance Creek [Index No. 16-19-(1)] from source to Lake Mackintosh Dam including all tributaries has been reclassified from Class WS-III NSW to Class WS-II NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective June 1, 1994 as follows:

(1) The Black River from its source to the Cape Fear River [Index Nos. 18-68-(0.5), 18-68-(3.5) and 18-65-(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.

(2) The South River from Big Swamp to the Black River [Index Nos. 18-68-12-(0.5) and 18-68-12(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.

(3) Six Runs Creek from Quewhiffle Swamp to the Black River [Index No. 18-68-2] was reclassified from Class C Sw to Class C Sw ORW.

(i) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective September 1, 1994 with the reclassification of the Deep River [Index No. 17-(36.5)] from the Town of Gulf-Goldston water supply intake to US highway 421 including associated tributaries from Class C to Classes C, WS-IV and WS-IV CA.

(j) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 1, 1998 with the revision to the primary classification for portions of the Deep River [Index No. 17-(28.5)] from Class WS-IV to Class WS-V, Deep River [Index No. 17-(41.5)] from Class WS-IV to Class C, and the Cape Fear River [Index 18-(10.5)] from Class WS-IV to Class WS-V.

(k) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 1999 with the reclassification of Buckhorn Creek (Harris Lake)[Index No. 18-7-(3)] from the backwaters of Harris Lake to the Dam at Harris Lake from Class C to Class WS-V.

(l) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 1999 with the reclassification of the Deep River [Index No. 17-(4)] from the dam at Oakdale-Cotton Mills, Inc. to the dam at Randleman Reservoir (located 1.6 mile upstream of U.S. Hwy 220 Business), and including tributaries from Class C and Class B to Class WS-IV and Class WS-IV & B. Streams within the Randleman Reservoir Critical Area have been reclassified to WS-IV CA. The Critical Area for a WS-IV reservoir is defined as 0.5 mile and draining to the normal pool elevation of the reservoir. All waters within the Randleman Reservoir Water Supply Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in 15A NCAC 02B .0248.

(m) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 1, 2002 as follows:

(1) Mill Creek [Index Nos. 18-23-11-(1), 18-23-11-(2), 18-23-11-3, 18-23-11-(5)] from its source to the Little River, including all tributaries was reclassified from Class WS-III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.

(2) McDeed's Creek [Index Nos. 18-23-11-4, 18-23-11-4-1] from its source to Mill Creek, including all tributaries was reclassified from Class WS III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.

The "@" symbol as used in this Paragraph means that if the governing municipality has deemed that a development is covered under a "5/70 provision" as described in Rule 15A NCAC 02B .0215(3)(b)(i)(E) (Fresh Surface Water Quality Standards for Class WS-III Waters), then that development is not subject to the stormwater requirements as described in rule 15A NCAC 02H .1006 (Stormwater Requirements: High Quality Waters).

(n) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective November 1, 2004 as follows:

(1) A portion of Rocky River [Index Number 17-43-(1)] from a point approximately 0.3 mile upstream of Town of Siler City upper reservoir dam to a point approximately 0.3 mile downstream of Lacy Creek from WS-III to WS-III CA.

(2) A portion of Rocky River [Index Number 17-43-(8)] from dam at lower water supply reservoir for Town of Siler City to a point approximately 65 feet below dam (site of proposed dam) from C to WS-III CA.

(3) A portion of Mud Lick Creek (Index No. 17-43-6) from a point approximately 0.4 mile upstream of Chatham County SR 1355 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.

(4) A portion of Lacy Creek (17-43-7) from a point approximately 0.6 mile downstream of Chatham County SR 1362 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.

(o) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water Quality maintains a Geographic Information Systems data layer of these UWLs.

(1) Military Ocean Terminal Sunny Point Pools, all on the eastern shore of the Cape Fear River [Index No. 18-(71)] were reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(2) Salters Lake Bay near Salters Lake [Index No. 18-44-4] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(3) Jones Lake Bay near Jones Lake [Index No. 18-46-7-1] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(4) Weymouth Woods Sandhill Seep near Mill Creek [18-23-11-(1)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(5) Fly Trap Savanna near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(6) Lily Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(7) Grassy Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(8) The Neck Savanna near Sandy Run Swamp [Index No. 18-74-33-2] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(9) Bower's Bog near Mill Creek [Index No. 18-23-11-(1)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(10) Bushy Lake near Turnbull Creek [Index No. 18-46] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(p) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective [ ] January 1, 2009 as follows:

(1) a portion of Cape Fear River [Index No. 18-(26)] (including tributaries) from Smithfield Packing Company's intake, located approximately 2 miles upstream of County Road

1316, to a point approximately 0.5 miles upstream of Smithfield Packing Company's intake from Class C to Class WS-IV CA.

(2) a portion of Cape Fear River [Index No.18-(26)] (including tributaries) from a point approximately 0.5 miles upstream of Smithfield Packing Company's intake to a point approximately 1 mile upstream of Grays Creek from Class C to Class WS-IV.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. January 1, 2009; November 1, 2007; November 1, 2004; August 1, 2002; April 1, 1999; August 1, 1998; September 1, 1994; June 1, 1994; August 3, 1992; August 1, 1990.

SUBMISSION FOR PERMANENT RULE

[Authority G.S. 150B-21.19]

May 19, 2008
AGENCY COPY

1. Rule-Making Agency: DENR – Environmental Management Commission

2. Rule citation & name (name not required for repeal): 15A NCAC 02B .0303 Little Tennessee River Bain and Savannah River Drainage Area

FILED
2009 MAY 19 PM 3:37
OFFICE OF ADMIN HEARINGS

3. Action: ☐ ADOPTION ☒ AMENDMENT ☐ REPEAL

4. Notice:

☒ Notice Required
Notice of text on: 12/15/2008
Hearing on: 04/22/2008
Adoption by agency on: 05/14/2009
☐ Notice not required under G.S.:
Adoption by agency on:

5. Fiscal impact (mark all that apply):

☒ State funds affected
☐ Local funds affected
☐ Substantial economic impact
☐ No fiscal note required pursuant to G.S. 150B-21.4
☐ Rule-making is not subject to G.S. 150B-21.4;
Cite authority:

6. Rule establishes or increases a fee?

☐ Yes
☐ The agency has express authorization of the amount of the fee (G.S. 12-3.1(a)(1)).
☐ The agency has general authorization for the fee and has consulted the Joint Legislative Commission on Governmental Operation. Date of consultation:
☐ The agency has general authorization for the fee and has not consulted the Joint Legislative Commission on Governmental Operation.
☒ No

7. REASON FOR ACTION

7A. What prompted this action? Check all that apply:

☒ Agency
☐ Court order / cite:
☐ Federal statute / cite:
☐ Federal regulation / cite:
☐ Legislation enacted in last General Assembly session
Cite Session Law: 2005-0097
☐ Petition for rule-making
☐ Other:

7B. Explain: The Sierra Club requested that Horsepasture River be reclassified to include the ORW designation. The lower stretch of the river and its tributaries fully meet ORW criteria. The rest of the river and its watershed contain outstanding resource values, or excellent water quality, but not both characteristics, and thus, these waters do not fully meet the ORW criteria. To provide protection for the excellent water quality in the lower river stretch (and parts of the rest of the watershed) as well as outstanding resource values found throughout the watershed, the ORW designation and a special management strategy is proposed for the lower river stretch's watershed and the rest of the watershed, respectively. The special strategy is the same as the ORW designation's strategy except that expansions of existing wastewater discharges and new domestic wastewater discharges are to be allowed provided that certain conditions are met for various water quality parameters.

8. Rule-making Coordinator: Nancy C. Pate
Address: 1601 Mail Service Center
Raleigh, NC 27699-1601
Phone: (919)715-4192
E-Mail: Nancy.Pate@ncdenr.gov

Agency Contact, if any: Elizabeth Kountis, Jeff Manning
Phone: (919) 807-6418, (919) 807-6415
E-Mail: Elizabeth.Kountis@ncdenr.gov, Jeff.Manning@ncdenr.gov

9. Signature of Agency Head* or Rule-making Coordinator:

Nancy C Pate

*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Nancy C. Pate
Title: DENR Rule-making Coordinator

RRC AND OAH USE ONLY

APPROVED JUN 18 2009

Action taken:
☐ RRC Approval:
☐ RRC Objection:
☐ RRC Extension of review:
☐ RRC determined substantial changes:
☐ Subject to Legislative Review
☐ Other:

Submitted for codification in the Code:

Agency Copy
5/19/09

15A NCAC 02B .0303 has been amended as published in 23:12 NCR 1155, 1165-1167 as follows:

15A NCAC 02B .0303 LITTLE TENN RIVER BASIN AND SAVANNAH RIVER DRAINAGE AREA

(a) The Little Tenn River Basin and Savannah River Drainage Area Schedule of Classifications and Water Quality Standards may be inspected at the following places:

(1) the Internet at http://h2o.enr.state.nc.us/csu/; and

(2) the North Carolina Department of Environment and Natural Resources:

(A) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina

(B) Division of Water Quality
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Georgia or Tennessee shall be classified "C Tr." Such streams in the Savannah River drainage area entering South Carolina shall be classified "B Tr."

(c) The Little Tennessee River Basin and Savannah River Drainage Area Schedule of Classifications and Water Quality Standards was amended effective:

(1) February 16, 1977;
(2) March 1, 1977;
(3) July 13, 1980;
(4) February 1, 1986;
(5) October 1, 1987;
(6) March 1, 1989;
(7) January 1, 1990;
(8) July 1, 1990;
(9) August 1, 1990;
(10) March 1, 1991;
(11) August 3, 1992;
(12) February 1, 1993;
(13) August 1,1994;
(14) September 1, 1996;
(15) August 1, 1998;
(16) August 1, 2000;
(17) April 1, 2003;
(18) January 1, 2007;
(19) November 1, ~~2007.~~ 2007;

(20) July 1, 2009.

(d) The Schedule of Classifications of Water Quality Standards for the Little Tennessee Basin and Savannah River Drainage Area was amended effective March 1, 1989 as follows:

(1) Nantahala River (Index No. 2-57) from source to the backwaters of Nantahala Lake and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW.

(2) Chattooga River (Index No. 3) including Scotsman Creek, Overflow Creek, Big Creek, Talley Mill Creek and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW and Clear Creek and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective January 1, 1990 as follows:

(1) North Fork Coweeta Creek (Index No. 2-10-4) and Falls Branch (Index No. 2-10-4-1) were reclassified from Class C to Class B.

(2) Burningtown Creek (Index No. 2-38) was reclassified from C-trout to B-trout.

(f) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective July 1, 1990 by the reclassification of Alarka Creek (Index No. 2-69) from source to Upper Long Creek (Index No. 2-69-2) including all tributaries from Classes C and C Tr to Classes C HQW and C Tr HQW.

(g) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective March 1, 1991 as follows:

(1) Cartoogechaye Creek [Index Nos. 2-19-(1) and 2-19-(16)] from Gibson Cove Branch to bridge at U.S. Hwy. 23 and 441 and from the bridge at U.S. Hwy. 23 and 441 to the Little Tennessee River was reclassified from Classes WS-III Tr and C Tr to Classes WS-III and B Tr and B Tr respectively.

(2) Coweeta Creek (Index Nos. 2-10) from its source to the Little Tennessee River including all tributaries except Dryman Fork (Index No. 2-10-3) and North Fork Coweeta Creek (Index No. 2-10-4) was reclassified from Classes C and C Tr to Classes B and B Tr.

(h) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area has been amended effective February 1, 1993 as follows:

(1) Bearwallow Creek from its source to 2.3 miles upstream of the Toxaway River [Index No. 4-7-(1)] was revised to indicate the application of an additional management strategy (referencing 15A NCAC 2B .0201(d) to protect downstream waters; and

(2) the Tuckaseegee River from its source to Tennessee Creek [Index No. 2-79-(0.5)] including all tributaries was reclassified from Classes WS-III&B Tr HQW, WS-III HQW and WS-III to Classes WS-III Tr ORW and WS-III ORW.

(j) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 1, 1994 with the reclassification of Deep Creek [Index Nos. 2-79-63-(1) and 2-79-63-(16)] from its source to the Great Smokey Mountains National Park Boundary including tributaries from Classes C Tr, B Tr and C Tr HQW to Classes WS-II Tr and WS-II Tr CA.

(k) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective September 1, 1996 as follows:

(1) Deep Creek from the Great Smoky Mountains National Park Boundary to the Tuckasegee River [Index no. 2-79-63-(21)] was reclassified from Class C Tr to Class B Tr; and

(2) the Tuckasegee River from the West Fork Tuckasegee River to Savannah Creek and from Macks Town Branch to Cochran Branch [Index Nos. 2-79-(24), 2-79(29.5) and 2-79-(38)] was reclassified from Classes WS-III Tr, WS-III Tr CA and C to Classes WS-III&B Tr, WS-III&B Tr CA and B.

(l) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended effective August 1, 1998 with the reclassifications of Thorpe Reservoir (Lake Glenville), Hurricane Creek, and Laurel Branch [Index Nos. 2-79-23-(1), 2 -79-23-2, and 2-79-23-2-1 respectively] from classes WS-III&B, WS-III Tr and WS-III to classes WS-III&B HQW, WS-III Tr HQW, and WS-III HQW.

(m) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended August 1, 2000 with the reclassification of Wesser Creek [Index No. 2-79-52-5-1] from its source to Williams Branch from Class C to Class C Tr.

(n) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended April 1, 2003 with the reclassification of a portion of the Little Tennessee River [Index No. 2-(1)] from a point 0.4 mile upstream of N.C. Highway 28 to Nantahala River Arm of Fontana Lake from Class C to Class B.

(o) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended January 1, 2007 with the reclassification of the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks, [Index Nos. 2-96 through 2-164 (excluding all waterbodies that drain to the south shore of Fontana Lake)] from Class B, C Tr, WS-IV Tr CA, WS-IV Tr, and WS-IV & B CA to Class B ORW, C Tr ORW, WS-IV Tr ORW CA, WS-IV Tr ORW, and WS-IV & B ORW CA, respectively. Additional site-specific management strategies are outlined in Rule 15A NCAC 02B .0225(e)(12).

(p) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was ameneded effective November 1, 2007 with the reclassification of Richland Balsam Seep near

Beechflat Creek [Index No. 2-79-28-3-2] to Class WL UWL as defined in 15A NCAC 02B. 0101. The Division of Water Quality maintains a Geographic Information Systems data layer of the UWL.

(q) The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area was amended July 1, 2009 with the reclassification of the watershed of the lower portion of the Horsepasture River [portion of Index Number 4-13-(12.5)] from a point approximately 0.60 miles downstream of N.C. 281 (Bohaynee Road) to the NC-SC state line from Class B Tr to Class B Tr ORW, and the watershed of the upper portion of the Horsepasture River [Index Number 4-13-(0.5) and a portion of Index Number 4-13-(12.5)] from source to a point approximately 0.60 miles downstream of N.C. 281 (Bohaynee Road) to include only the ORW management strategy as represented by "+". The "+" symbol as used in this paragraph means that all undesignated waterbodies that are located within the watershed of the upper portion of Horsepasture River shall comply with Paragraph (c) of Rule .0225 of this Subchapter in order to protect the designated waters as per Rule .0203 of this Subchapter and to protect outstanding resource values found throughout the entire Horsepasture River watershed. Site-specific management strategies are outlined in Rule 15A NCAC 02B .0225(e)(13).

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); S.L. 2005-97;*
Eff. February 1, 1976;
Amended Eff. July 1, 2009; November 1, 2007; January 1, 2007; April 1, 2003; August 1, 2000; August 1, 1998; September 1, 1996; August 1, 1994; February 1, 1993; August 3, 1992; March 1, 1991.

SUBMISSION FOR PERMANENT RULE

[Authority G.S. 150B-21.19]

May 19, 2008
AGENCY COPY

1. Rule-Making Agency: DENR – Environmental Management Commission

2. Rule citation & name (name not required for repeal): 15A NCAC 02B .0225 Outstanding Resource Waters

3. Action: ☐ ADOPTION ☒ AMENDMENT ☐ REPEAL

4. Notice:

☒ Notice Required
Notice of text on: 12/15/2008
Hearing on: 04/22/2008
Adoption by agency on: 05/14/2009

☐ Notice not required under G.S.:
Adoption by agency on:

5. Fiscal impact (mark all that apply):

☒ State funds affected
☐ Local funds affected
☐ Substantial economic impact
☐ No fiscal note required pursuant to G.S. 150B-21.4
☐ Rule-making is not subject to G.S. 150B-21.4;
Cite authority:

FILED
2009 MAY 19 PM 3:37
OFFICE OF
ADMIN HEARINGS

6. Rule establishes or increases a fee?

☐ Yes
- ☐ The agency has express authorization of the amount of the fee (G.S. 12-3.1(a)(1)).
- ☐ The agency has general authorization for the fee and has consulted the Joint Legislative Commission on Governmental Operation. Date of consultation:
- ☐ The agency has general authorization for the fee and has not consulted the Joint Legislative Commission on Governmental Operation.

☒ No

7. REASON FOR ACTION

7A. What prompted this action? Check all that apply:

- ☒ Agency
- ☐ Court order / cite:
- ☐ Federal statute / cite:
- ☐ Federal regulation / cite:
- ☐ Legislation enacted in last General Assembly session
  Cite Session Law: 2005-0097
- ☐ Petition for rule-making
- ☐ Other:

7B. Explain: The Sierra Club requested that Horsepasture River be reclassified to include the ORW designation. The lower stretch of the river and its tributaries fully meet ORW criteria. The rest of the river and its watershed contain outstanding resource values, or excellent water quality, but not both characteristics, and thus, these waters do not fully meet the ORW criteria. To provide protection for the excellent water quality in the lower river stretch (and parts of the rest of the watershed) as well as outstanding resource values found throughout the watershed, the ORW designation and a special management strategy is proposed for the lower river stretch's watershed and the rest of the watershed, respectively. The special strategy is the same as the ORW designation's strategy except that expansions of existing wastewater discharges and new domestic wastewater discharges are to be allowed provided that certain conditions are met for various water quality parameters.

8. Rule-making Coordinator: Nancy C. Pate
Address: 1601 Mail Service Center
Raleigh, NC 27699-1601
Phone: (919)715-4192
E-Mail: Nancy.Pate@ncdenr.gov

Agency Contact, if any: Elizabeth Kountis, Jeff Manning
Phone: (919) 807-6418, (919) 807-6415
E-Mail: Elizabeth.Kountis@ncdenr.gov, Jeff.Manning@ncdenr.gov

9. Signature of Agency Head* or Rule-making Coordinator:

Nancy C Pate

*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Nancy C. Pate
Title: DENR Rule-making Coordinator

RRC AND OAH USE ONLY

Action taken:
APPROVED JUN 18 2009
- ☐ RRC Approval:
- ☐ RRC Objection:
- ☐ RRC Extension of review:
- ☐ RRC determined substantial changes:
- ☐ Subject to Legislative Review
- ☐ Other:

Submitted for codification in the Code:

Agency Copy
5/19/09

15A NCAC 02B .0225 HAS BEEN AMENDED AS PUBLISHED IN 23:12 NCR 1155, 1161-1165 AS FOLLOWS (PLEASE NOTE THAT THIS AMENDMENT REPRESENTS OPTION 2 OF TWO OPTIONS PUBLISHED FOR THIS RULE IN 23:12 NCR, AND OPTION 1 WAS PUBLISHED IN 23:12 NCR 1155-1160):

15A NCAC 02B .0225 OUTSTANDING RESOURCE WATERS

(a) General. In addition to the existing classifications, the Commission may classify unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

(1) that the water quality is rated as excellent based on physical, chemical or biological information;

(2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values. In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

(1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;

(2) there is an unusually high level of water-based recreation or the potential for such recreation;

(3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters or National Wildlife Refuge, which do not provide any water quality protection;

(4) the waters represent an important component of a state or national park or forest; or

(5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW

(1) Freshwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. No new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program shall be required to follow the stormwater provisions as specified in 15A

NCAC 02H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 02H .1007.

(2) Saltwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. New development shall comply with the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 02H .1007. New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of submerged aquatic vegetation or a reduction of shellfish producing habitat as defined in 15A NCAC 03I .0101(b)(20)(A) and (B), except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the Commission. The Commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 02B .0302 through 02B .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Water Quality.

(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director
DENR/Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

The envelope containing the petition shall clearly bear the notation: RULE-MAKING PETITION FOR ORW CLASSIFICATION.

(e) Listing of Waters Classified ORW with Specific Actions Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

(1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).

(2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:

(A) North and South Fowler Creeks;

(B) Green and Norton Mill Creeks;

(C) Cane Creek;

(D) Ammons Branch;

(E) Glade Creek; and

(F) Associated tributaries.

(3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:

(A) Ivy Creek;

(B) Rock Creek; and

(C) Associated tributaries.

(4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:

(A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;

(B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall be permitted such that the following water quality standards are maintained in the ORW segment:

(i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the

designated ORW under 7Q10 conditions, which are defined in Rule .0206(a)(1) of this Section;

(ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 02B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;

(iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A NCAC 02B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;

(C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall comply with the following:

(i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/1, and NH3-N = 2 mg/1;

(ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/1 for trout waters and to 20 mg/1 for all other waters;

(iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;

(iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.

(5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.

(6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the

U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.

(7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with less than 10 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges.

(A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.

(B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.

(C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.

(D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.

(E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.

(F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the

Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.

(8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 10 slips, having no boats over 21 feet in length and no boats with heads shall be allowed:

(A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.

(B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.

(C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.

(D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.

(9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:

(A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;

(B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:

(i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH3-N = 2 mg/l;

(ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;

(iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;

(iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.

(v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 02B .0206).

(10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.

(11) Swift Creek and Sandy Creek ORW Area (Tar-Pamlico River Basin) [portion of Index No. 28-78-(0.5) and Index No. 28-78-1-(19)]: all undesignated waterbodies that drain to the designated waters shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters.

(12) Fontana Lake North Shore ORW Area (Little Tennessee River Basin and Savannah River Drainage Area) [Index Nos. 2-96 through 2-164 (excluding all waterbodies that drain to the south shore of Fontana Lake) consists of the entire watersheds of all creeks that drain

to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks. In addition to the requirements specified in Subparagraph (c)(1) of this Rule, any person conducting development activity disturbing greater than or equal to 5,000 square feet of land area in the designated ORW area shall undertake the following actions to protect the outstanding resource values of the designated ORW and downstream waters:

(A) investigate for the presence of and identify the composition of acid-producing rocks by exploratory drilling or other means and characterize the net neutralization potential of the acid-producing rocks prior to commencing the land-disturbing activity;

(B) avoid areas to the maximum extent practical where acid-producing rocks are found with net neutralization potential of –5 or less;

(C) establish background levels of acidity and mineralization prior to commencing land-disturbing activity, and monitor and maintain baseline water quality conditions for the duration of the land-disturbing activity and for any period thereafter not less than two years as determined by the Division as part of a certification issued in accordance with 15A NCAC 02H .0500 or stormwater permit issued pursuant to this Rule;

(D) obtain a National Pollutant Discharge Elimination System permit for construction pursuant to Rule 15A NCAC 02H .0126 prior to initiating land-disturbing activity;

(E) design stormwater control systems to control and treat stormwater runoff generated from all surfaces generated by one inch of rainfall in accordance with 15A NCAC 02H. 1008; and

(F) replicate pre-development runoff characteristics and mimic the natural and unique hydrology of the site, post development.

(13) Horsepasture River ORW Area (Savannah Drainage Area) [Index No. 4-13-(0.5) and Index No. 4-13-(12.5)]: all undesignated waterbodies that are located within the Horsepasture River watershed shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found throughout the watershed. However, new domestic wastewater discharges and expansions of existing wastewater discharges may be allowed provided that:

(A) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l, and NH_3-N = 2 mg/l;

(B) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for

all other waters except for mining operations, which will be held to their respective NPDES TSS permit limits;

(C) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both; and

(D) Volume: The total volume of treated wastewater for all discharges combined shall not exceed 25 percent of the total instream flow in the designated ORW under 7Q10 conditions, which are defined in Rule .0206(a)(1) of this Section.

History Note: *Authority G.S. 143-214.1; S.L. 2005-97;*
Eff. October 1, 1995;
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